

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA, FROM THE
JUDGMENT OF THE HONOURABLE MR. JUSTICE RIDEOUT, PRONOUNCED ON
THE 26TH DAY OF NOVEMBER, 2020.

REGINA

RESPONDENT

v.

PATRICK HENRY FOX

APPELLANT

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Part 1: Statement of Facts

1. On 2020-11-26 I was convicted, in the Provincial Court of BC, by Judge Rideout, of one count of breach of probation (CCC s. 733.1). On 2021-04-12 I was sentenced by Judge Rideout to 16.5 months in jail and a 12 month probation order.

Background

2. On 2020-08-19 I was convicted by Judge Phillips in the Provincial Court of BC, of breaching a probation order by making the website www.desicapuano.com (herein "the website") publicly available (BCPC file 244069-6-B; BCCA no CA46979). I was sentenced to six months in jail and six months of probation. The probation order imposed by Judge Phillips contained one condition requiring me, essentially, to take down the website within 48 hours of my release from custody.
3. On 2020-08-19 an article entitled "Dear David Eby" was posted onto the website. The article was written as an open letter, purportedly from myself to David Eby. The article was critical and mocking of the BC justice system and of specific justice system participants.
4. On 2020-08-19 I was, at all times, either in holding cells, in the court room, in the Sheriff's transport, or locked in my cell at NFPC. I had no access to a telephone or to the internet at any time on that day. I had no contact with anyone outside the court room, the BC Sheriffs, or the jail staff (Affid2, para 4).
5. On 2020-08-20 I was released from custody when the other matter I was being detained on was stayed (CA46979 TR p54l46 - p55l31). I was physically released from the jail at approximately 8:00pm. At that time the probation order imposed by Judge Phillips came into effect (TR p3l1-6).
6. On 2020-09-17 I was arrested by the Vancouver Police Department (VPD) at the Salvation Army Belkin House where I had been residing since my release from

custody (TR p9l43 - p10l4). I was charged with breach of probation for allegedly failing to take down the website as required by Condition 4 of the Judge Phillips probation order.

7. At the time of my arrest a mobile phone and a laptop were seized from me.
8. Following my arrest I was transported to the police station and subsequently interviewed by Det. Kyle Dent.
9. The majority of my statements to Det. Dent were plainly sarcastic, joking, and/or satirical. Repeatedly throughout the interview, Det. Dent also made numerous sarcastic and joking comments. Both I and Det. Dent repeatedly laughed at such statements throughout the interview (Affid1, Exhibit C).
10. In my interview with Det. Dent, I also openly stated I did not believe any of what I said in the interview is going to matter because my experience has been that I am going to be found guilty, regardless (Affid1, Exhibit D, page 2-1).
11. Subsequent to the interview I was booked into the Vancouver City Jail.
12. On 2020-09-17 I had an initial bail hearing, during which Crown Counsel Chris Johnson made numerous false and highly defamatory claims against me (e.g. SuppTR p3l10-12; p3l15-17; p3l20-21; p3l27-28; p3l33-36; p3l38-40; p3l45-46; p4l4-10; p4l20-21; p4l22-25; p4l32-34; p4l38-39). Due in part to having just been arrested and being in holding cells, I did not have access to the evidence to prove Mr. Johnson's claims were false. For that reason, I requested to adjourn the bail hearing for one week (SuppTR p5l25-27).
13. On 2020-09-24 I had another appearance for a bail hearing but still had not received the documents I required to prove Crown's defamatory statements were false so I requested another adjournment (SuppTR p9l18-38). Mr. Johnson falsely claimed

the statements in question were not made in the context of a bail hearing (SuppTR p9l42-47).

14. On or about 2020-09-29 the material I was waiting for arrived in the mail at NFPC but the jail rejected it, requiring me to ask my friend to resend it.

15. On 2020-10-05 I had another appearance for a bail hearing. I informed the court I had received the material I had been waiting for, to refute the Mr. Johnson's claims but that the jail had rejected it so I had to have it resent and it hadn't yet arrived again (SuppTR p13l39-42). The bail hearing was adjourned again. I also informed the court I've still not been arraigned or informed of the charges against me and requested a date be set for arraignment. The court instructed me to request that AFTER the bail hearing is completed (SuppTR p16l38-46).

16. On 2020-10-05, in open court, I requested Crown provide me some disclosure material because so far I hadn't received any disclosure. Mr. Johnson stated he will provide me some disclosure material (SuppTR p17l24-29).

17. On 2020-10-05 I left a voice message for Mr. Johnson, requesting to cancel the bail hearing until after I am arraigned and have obtained the evidence I was waiting to arrive in the mail again (Affid1, para 28).

18. On 2020-10-20 I had another appearance which was supposed to be the continuation of the bail hearing and the arraignment. At the hearing, Mr. Johnson stated he had mailed me "the particulars". I stated I only received a very brief narrative and a couple of statements related to the arrest, but no actual evidence or disclosure. Mr. Johnson admitted all he had sent me was the "initial package". Mr. Johnson also stated there's an electronic package which he was in the process of arranging to be disclosed to me on a laptop (SuppTR p22l43 - p23l8).

19. On 2020-10-20 I was arraigned (SuppTR p23l29-42).

20. At the appearance on 2020-10-20, after the trial date had been set for 2020-11-26, I requested a pretrial conference also be scheduled because there were a number of outstanding issues to be addressed (e.g. disclosure). Mr. Johnson claimed he was not aware of any issues but that if any arose he would schedule a pretrial conference. Mr. Johnson said if I have any issues I want to raise I can contact him (SuppTR p2413-12).

21. In late October or early November 2020 I left a voice message with Mr. Johnson's office informing him I have received the evidence I had been waiting for, and requesting he schedule my bail hearing, and a pretrial conference to address the outstanding disclosure issues. Mr. Johnson did not respond to or act on those requests (Affid1, para 28).

22. From the date of my arrest in September 2020 through the date of the trial in November 2020 I had made multiple requests to Crown, both in written correspondence and in open court, to be provided the disclosure material. Crown did not respond to any of my written correspondence, but responded to each request in court stating that he would provide me the disclosure (Affid1, para 4; SuppTR p17122-29; SuppTR p22143 - p2318).

23. On 2020-11-23 I received from the Crown, an external hard drive containing the disclosure material, consisting of 107 pages, and over 2 hours of audio/video recordings of my interactions with the police on 2020-09-17. The disclosure did not include transcripts of my interactions with the police, nor the Crown's witness list (Affid1, para 9-11).

Proceedings at Trial

24. On 2020-11-26 the trial commenced as scheduled, with Judge Rideout presiding and Chris Johnson appearing for the Crown.

25. The judge inquired whether I had full disclosure, to which I responded "I don't know if it's full, but I have disclosure" (TR p1I28-31).
26. The judge advised me "Mr. Johnson, as an officer of the court, has an obligation to ensure the trial proceeds in a fair and just manner. The prosecution takes no interest in the result. They remain objective in that regard." (TR p1I37-41)
27. In his opening arguments, Mr. Johnson admitted he INTENDED, prior to trial, to call particular witnesses (TR p2I43-45).
28. The judge asked me whether I had received disclosure of the audio recording of the interview with Det. Dent, and I responded affirmatively (TR p3I32-28). The judge DID NOT inquire whether the disclosure was sufficient or timely.
29. Crown called Det. Dent as a witness. I objected, based on having not received any prior notice of Crown's intention to call Det. Dent. I informed the court I had made multiple requests to Crown, over the past few months, for a copy of their witness list and they have not responded (TR p4I5-17). Mr. Johnson responded he had provided me full disclosure, including the recording of the interview with Det. Dent. Mr. Johnson further stated, in his view, that was all he was required to provide (TR p4I19-25). The judge asked Crown when the disclosure had been provided and Mr. Johnson responded it had been provided on Monday (2020-11-23) (TR p4I26-32). The judge then stated to me "...this is what's called an ambush and it's certainly frowned upon; [but] if you had disclosure which included the package with the name of Detective-Constable Dent so you knew what was coming" (TR p4I33-37). The judge went on to say "On the day of trial it's usually not well received by a trial judge as the sort of thing that's - unfortunately it should have been brought in advance of the trial date as an objection" (TR p4I37-41). The judge also said "What would happen if the - the most that would have happened is a judge would have adjourned it to another date to make sure you understand what's going on. It wouldn't defeat

the case. It would simply cause an adjournment, that's all" (TR p4l41-46). The judge then allowed Crown to call Det. Dent.

30. Det. Dent testified that he was first asked to be involved in the case on 2020-09-15 (TR p6l23-25).

31. Det. Dent testified that he had reviewed parts of the previous file to prepare for the interview (TR p6l35-36).

32. During examination in chief, Det. Dent testified about and was questioned at length about the article entitled "Dear David Eby" on the website (TR p7l11 - p9l13).

33. On direct-examination, Crown asked Det. Dent when the "Dear David Eby" article had been posted to the website and Dent responded 2020-08-19 at 1:53pm (TR p7l44 - p8l1).

34. Det. Dent testified he interviewed me on 2020-09-17 in relation to this charge (TR p9l45).

35. Mr. Johnson again pointed out there is an audio version of the interview, but no transcript. He claimed I "indicated" he can simply highlight a statement, and then I'd be entitled to ask any questions I want about it (TR p10l28-32).

36. During examination in chief, Det. Dent testified at length regarding particular statements which were made by me during his interview of me (TR p11l15 - p15l32). For the most part, Det. Dent's testimony regarding what was said and what occurred during the interview was based on his notes in a Task Action Report (TAR) which he prepared after completing the interview - NOT on a transcript of recording of the interview (TR p10l39-43; p11l6-10; p11l26-31).

37. On cross-examination, Det. Dent testified the first time he accessed the website was on 2020-09-16 (TR p16l18-21). He admitted he had not tried to access the website during the 48 hours following my release from custody from 2020-08-20 through 2020-08-22 (TR p16l22-26).
38. Det. Dent testified he does not know who the owner of the website is, nor who it was for the 48 hours following my release from custody, and that he has done no investigation into that matter (TR p16l27-38).
39. Det. Dent testified he had not contacted the hosting provider of the website (TR p16l39-41).
40. Det. Dent testified he has no knowledge of whether or not the website had been taken down within 48 hours of my release from custody (TR p16l42-44).
41. When asked, on cross-examination, who wrote the "Dear David Eby" article on the website, Det. Dent was persistently evasive and ultimately refused to address the question (TR p16l45 - p17l2).
42. When asked, on cross-examination, whether the "Dear David Eby" article had been written and posted to the website before I was released from custody on 2020-08-20, Det. Dent stated he had no knowledge of that (TR p17l22-25).
43. When asked whether I had stated that I still own or control the website, Det. Dent was evasive and alluded to unrelated, though possibly suggestive statements I had made in the interview (TR p17l39 - p18l2).
44. Following Det. Dent's repeated evasiveness and refusal to give direct answers to my questions on cross, the judge advised me that he (the judge) is entitled to draw inferences from the evidence to put together the factual pattern for the offenses (TR p18l3-13).

45. When I asked Det. Dent whether I had stated in the interview that I had transferred ownership and control of the website to a third party, he was evasive and did not give a direct answer. Ultimately, he testified he did not recall (TR p18132 - p1912).
46. On cross-examination Det. Dent testified he had no knowledge of whether the access logs for the website were publicly accessible (TR p19145 - p2013).
47. On cross-examination, when I asked Det. Dent whether I had stated that I had not taken down the website within 48 hours of my release he was evasive but eventually testified he did not have that information (TR p2014-32). When I then asked Det. Dent whether he had asked me if I had taken down the website he testified he didn't recall, that there was nothing in his notes about asking me that, and that he doesn't believe he asked me if I had taken down the website (TR p20133 - p31119).
48. Det. Dent testified that he had knowledge that the website had been "active and up", continuously, from the time of my release from custody until the time he interviewed me on 2020-09-17 (TR p21113-19). But on further cross-examination Det. Dent admitted he actually had no knowledge of whether or not the website was "active and up" at any time other than when he checked in on 2020-09-16 (TR p21120-38; p22113-7).
49. Det. Dent testified that his involvement in the case was only to interview me and that he did not review the file (TR p21145-47).
50. Det. Dent testified his involvement in the case was limited to interviewing me and that he had no knowledge of the website being up or down, active or not (TR p21147 - p22110).
51. Following Det. Dent's testimony Mr. Johnson sought to have the "Dear David Eby" article entered as an exhibit. I objected on the grounds that the document had no

relevance to the matters at trial. The court said that would be for arguments, then proceeded with admitting the exhibit (TR p23117-37).

52. Crown closed it's case.

53. I elected not to call any evidence (TR p25129-30).

54. In closing submissions, Mr. Johnson admitted that there was no evidence before the court to enable the court to conclude who owns the website (TR p26115-17).

Part 2: Errors in Judgment

55. Crown Counsel failed to make timely disclosure by withholding almost all disclosure material for more than a month, then providing it all to me less than three days before trial.

56. Crown Counsel failed to make timely disclosure by withholding the identities of all of the witnesses it intended to call at trial until the morning of the trial.

57. Crown Counsel acted in bad faith (abuse of process) by knowingly and deliberately withholding almost all disclosure material until three days before trial; and withholding the identities of the witnesses it intended to call at trial until the morning of the trial; in order to coerce me into adjourning the trial due to not being prepared, or proceeding with the trial unprepared.

58. Crown Counsel and Det. Dent knowingly and deliberately mislead the court regarding my statements to Det. Dent (abuse of process).

59. The trial judge erred in allowing the "Dear David Eby" article to be admitted as an exhibit.

60. Crown Counsel and the trial judge were using the criminal prosecution against me as retaliation for having repeatedly publicly exposed corruption and misconduct within the BCPS and the justice system, and as a means of attempting to coerce me into discontinuing the exposing of that corruption and misconduct (abuse of process).

61. The trial judge erred in considering Det. Dent a credible and reliable witness.

62. The trial judge misapprehended the scope of Condition 4 of the probation order.

63. The verdict was not supported by the evidence.

Part 3: Argument

64. Due to being in BC Corrections custody and not having access to legal research source material I am unable to search, find, or rely on any such authorities to support my arguments at this time.

Crown Counsel failed to make timely disclosure by withholding almost all disclosure material for more than a month, then providing it all to me less than three days before trial.

65. I believe this particular matter, of Crown Counsel unnecessarily withholding almost all of the disclosure material until just before the start of the trial, is an issue of law for which, I am sure, there must be well established precedents.

66. By withholding almost all of the disclosure material, and in particular the audio/video recordings of my interview by Det. Dent, coupled with their refusal to notify me of their intention to call Det. Dent as a witness, I was unable to sufficiently review the material and to prepare a trial plan in time for the trial. In particular, I was precluded

from preparing to cross-examine Det. Dent. And, I believe this matter was exacerbated by the facts that I was self-represented and in-custody.

67. Given the amount of disclosure material I was provided on 2020-11-23 (107 pages, and over 2 hours of recordings of my interactions with the police); that it was provided less than 72 hours before the trial; and that I was a self-represented, in-custody defendant who therefore had to do all of my preparations with pen and paper (without the aid of a computer); there is absolutely no way I could have been prepared in time for the trial.

68. Moreover, based on the judge's statements that "On the day of trial it's usually not well received by a trial judge as the sort of thing that's - unfortunately it should have been brought in advance of the trial date as an objection" (TR p4137-41) and "Mr. Johnson, as an officer of the court, has an obligation to ensure that the trial proceeds in a fair and just manner. The prosecution takes no interest in the result. They remain objective in that regard" (TR p1137-41), it seemed clear to me the judge was not going to consider any claims of late or missing disclosure; or suggestions of impropriety on the part of Mr. Johnson. In addition, given Mr. Johnson's refusal to schedule a pretrial conference when I requested he do so at the 2020-10-20 appearance, his claim that he's not aware of any outstanding issues but that if any arise I can contact him, and his refusal to respond to or act upon my subsequent requests to schedule a bail hearing and a pretrial conference (Affid1, para 28), I was effectively precluded from being able to raise my concerns to the court prior to the trial.

69. Crown's consistent statements in court that they would provide me disclosure, followed by their consistent failure to actually do so; their failure to respond to any of my correspondence or voice messages; and their failure to reschedule my bail hearing and to schedule a pretrial conference as requested; all contributed to my belief that they did not intend to proceed with the trial. And given that presumption on my part, I could not reasonably have devised a trial plan.

70. The disclosure material provided to me prior to the trial did not include a transcript of the Det. Dent interview, only the audio and video recordings of the interview (TR p10127-29). For that reason, I would have had to listen to/watch the entire recording and make hand written notes about potentially interesting parts which would have taken many hours and could not have been done adequately in less than three days. Also, without the transcript, I would have had to essentially memorize where, within the audio/video recordings, every statement or occurrence which the Crown might refer to was located so I could recall and present it during cross-examination, if necessary.
71. Moreover, I could not have anticipated how egregiously Mr. Johnson and Det. Dent were going to misrepresent the statements I made in the interview. Because they were referring to statements I had no, or inadequate recollection of, I was not able to challenge or confront Det. Dent on the accuracy and fullness of his testimony.
72. If the reason for the Crown's late disclosure had been that they had only just received the material from the VPD then it might be excusable. However, it would stand to reason if that were the case the Crown would have mentioned, at some point prior to trial, to me or to the court, that it still had not received the disclosure from the VPD. But Crown made no such notification.
73. Based on Mr. Johnson's statement in court on 2020-10-20, that there was electronic disclosure he was in the process of arranging to disclose to me on a laptop (SuppTR p2316-8), I believe it is reasonable to conclude that Crown had the disclosure material in its possession prior to that date - more than a month before it actually disclosed it to me.
74. The disclosure material provided to me on 2020-11-23 consisted of an RTCC prepared by the VPD on 2020-09-17 and multiple audio/video recordings of my

interactions with the VPD on 2020-09-17. Therefore, all of that material existed and was in the possession of the VPD and/or the Crown by 2020-09-17.

75. Although the Crown admitted at the trial that it had provided me all but the initial disclosure only three days before the trial (TR p4126-32) the judge appeared to completely disregard the lack of timeliness. The judge made no mention of or reference to the timing of the disclosure (TR p4133-46).

76. And finally, attached as Exhibit C to my Affidavit regarding disclosure, is an analysis of Det. Dent's testimony regarding my statements in his interview of me, and the discrepancies between his testimony and what actually occurred in the interview. Attached as Exhibit D to that Affidavit are excerpts from the interview which clearly demonstrate that throughout the interview I was consistently sarcastic and aloof, which was contrary to how Det. Dent and Mr. Johnson deliberately presented my statements to the court. Had I received timely disclosure and notice of Crown's intention to call Det. Dent, I would have been able to thoroughly review the audio/video recording of the interview, and would have been prepared to confront Det. Dent on the accuracy and fullness of his testimony.

Crown Counsel failed to make timely disclosure by withholding the identities of all of the witnesses it intended to call at trial until the morning of the trial.

77. I believe this particular matter, of Crown Counsel unnecessarily withholding the identities of the witnesses it INTENDS to call at trial, is an issue of law for which, I am certain, there must be well established precedents.

78. By withholding the identities of the witnesses Crown intended to call, and in particular Det. Dent, and by also failing to respond to my requests to be provided their witness list, I was unable to anticipate and to prepare to cross-examine the Crown's witness.

79. Since the Crown is not required to, and generally does not notify the defense of the witnesses it DOES NOT intend to call, then it was reasonable for me to conclude the Crown's silence on the matter simply meant they did not intend to call any witnesses. That would also have been consistent with the fact that in my interview with Det. Dent there were no statements I had made which, when taken in context, would have any evidentiary value (Affid1, para 15); and that if any actual investigation were done, any and all tangible evidence found would only support my innocence.
80. Prior to trial, I knew that in order to have the recording of my interview with Det. Dent admitted Crown would require Det. Dent to testify to the authenticity and correctness of the recording. So by not notifying me of their intention to call Det. Dent it was reasonable for me to conclude Crown did not intend to seek to admit the recording of my interview with Det. Dent (Affid1, para16). And since an audio/video recorded statement carries much more evidentiary weight than witness testimony, there would be no legitimate reason for the Crown to seek to rely on Det. Dent's testimony regarding my statements rather than relying on the recordings of those statements.
81. In his opening statements Mr. Johnson admitted he had prior intention to call "a number of witnesses" (TR p2143-44). That being the case, there is no legitimate reason for why he would refuse to disclose those identities prior to trial.
82. Mr. Johnson's position at trial, which was accepted by the judge, was that the 107 pages and 2 hours of recordings he had disclosed to me three days prior contained the evidence of Det. Dent and that "that is, in [his] view, what the Crown is required to provide" (TR p4119-32). However, that disclosure material contained the names of 53 people, at least 10 of whom were VPD staff associated with the case. Therefore, Mr. Johnson's and the judge's proposition seems to be that the defense, including a self-represented, in-custody defendant, is expected to prepare his defense based on the assumption that every person named in the disclosure material is likely to be called as a witness. I submit that such an expectation on the defense, particularly a self-represented, in-custody defendant, is simply unrealistic.

83. In response to my objection to the calling of Det. Dent due to the Crown's failure to disclose their intention to call him, the judge accepted the Crown's position on the matter and told me I should have raised the objection before the trial (TR p4137-41). However, I could not reasonably be expected to be able to raise an objection about the Crown failing to notify me of its intention to do something, prior to the Crown actually doing the thing it failed to notify me about. Prior to that point I cannot possibly know what the Crown's intentions are if they have not stated them.

Crown Counsel acted in bad faith (abuse of process) by knowingly and deliberately withholding almost all disclosure material until three days before trial; and withholding the identities of the witnesses it intended to call at trial until the morning of the trial; in order to coerce me into adjourning the trial due to not being prepared, or proceeding with the trial unprepared.

84. In each of the three most recent prosecutions against me, all of which were prosecuted by Chris Johnson and all of which related to allegations of breaching probation orders relating to the public accessibility of the website, Mr. Johnson either created or claimed circumstances at the start of the trial which were clearly expected to result in delaying the start of the trial and thereby prolonging my pretrial detention (Affic2, para7). I believe the fact that that had occurred consistently, in every case which Mr. Johnson has prosecuted against me is sufficient to establish a pattern. I believe Mr. Johnson and the BCPS have been using that tactic as a strategy to attempt to coerce me into accepting a plea agreement in each of those cases.

85. Based on Mr. Johnson's statement in court on 2020-10-20, that there was an electronic package he was in the process of disclosing to me on a laptop (SuppTR p2315-8) it is reasonable to conclude that that disclosure material was in the Crown's possession by that point. And based on the information in the RTCC, that report was prepared by the VPD on 2020-09-17. Presumably, the material from the VPD was forwarded to the Crown shortly after that time. But even if the Crown did not

receive the material from the VPD until 2020-10-20, there could be no justification for their continuing to withhold it until 2020-11-23. Unless, of course, they were withholding the disclosure deliberately so that I would not be able to be ready for the trial date and would either have to adjourn or proceed unprepared.

86. The disclosure material provided prior to the trial did not include any notification of any witnesses the Crown intended to call. That information was not provided until the morning of the trial.

87. In his opening submissions, Mr. Johnson admitted he had INTENDED to call particular witnesses (TR p2143-44). That shows that he had prior intention to call Det. Dent, so his failure to notify me of that must have been intentional. And, given that the Crown's entire case ended up being based on Det. Dent's testimony Mr. Johnson must have known that withholding his witness list would result in me being unprepared to proceed with the trial as scheduled.

88. In response to my objection to the calling of Det. Dent, Mr. Johnson stated "I did provide Mr. Fox, of course, full disclosure...including the evidence of Detective-Constable [Dent]...And that is, in my view, what the Crown is required to provide." He then added that that disclosure had been provided three days prior (TR p4119-32). It is my understanding that Mr. Johnson is a very experienced, skilled, and highly regarded lawyer and, therefore, I reject the idea that he believed that was all the Crown was required to provide. I believe it is much more likely that Mr. Johnson realized there simply was no legitimate justification for withholding the disclosure and the witness list.

89. If this was the only case in which the Crown, and specifically Mr. Johnson, had engaged in conduct which would reasonably be expected to result in an adjournment of the trial on the day of the trial, then perhaps I could consider it an anomaly. However, as pointed out above, this pattern has occurred in all three, 100%, of the

cases which Mr. Johnson has prosecuted against me. For that reason, I believe it is clear that it is being done deliberately and strategically.

Crown Counsel and Det. Dent knowingly and deliberately mislead the court regarding my statements to Det. Dent (abuse of process).

90. When Det. Dent interviewed me on 2020-09-17, the overwhelming majority of my statements were sarcastic and joking. When watching the video recording of the interview it is often very obvious from my gestures, manner, and tone that I am being sarcastic, joking, or satirical. Repeatedly, throughout the interview, Det. Dent also made jokes, was sarcastic, and laughed at both his and my comments.

91. Also, throughout the interview I remained aloof, indifferent, and at times uninterested in the entire process.

92. Crown deliberately did not disclose to me the recordings of my interview with Det. Dent until just three days before the trial. And at the time of the trial there was no transcript of the interview. Given that the interview was a little over an hour and the amount of information I would have to review and make notes for, there was no way I could be prepared in less than three days.

93. At trial, Det. Dent was questioned by Crown and testified extensively regarding my statements in the interview. Both Mr. Johnson and Det. Dent consistently portrayed my statements as being serious and sincere. At no point was there ever any mention by either Det. Dent or Mr. Johnson of the possibility that my statements might have been made jokingly, sarcastically, or insincerely. And, on cross-examination, while I did recall, overall, that my statements were generally sarcastic, et cetera, my recollection of the details of the statements was inadequate, since more than two months had passed since the interview and I'd had no opportunity to review it.

94. Since there was no transcript of the interview, Mr. Johnson, presumably, prepared for his examination of Det. Dent by reviewing the video recording of the interview. And that being the case, Mr. Johnson must have known my statements were made jokingly and sarcastically. But that did not stop him from deliberately leading the court to believe the statements were serious.
95. Det. Dent was obviously present for the interview, so he, likewise, must have known my statements were made jokingly and sarcastically, but he also deliberately lead the court to believe the statements were serious. In fact, early in the interview, Det. Dent even stated "Obviously. You're, you and I have very similar sarcasm..." (Affid2, Exhibit D, page 3-1). If, as he acknowledged, he and I had very similar sarcasm, he should have had no difficulty identifying when I was being sarcastic.
96. While testifying at my trial in another matter (244069-8-B, CA48145), Det. Dent admitted that his purpose at my trial in this matter was to testify only about what I had said when he interviewed me, regardless of how it was said, the context in which it was said, or the circumstances under which it was said. Even though that meant his testimony did not accurately and truthfully reflect what was being communicated in the interview (Affid2, para 6).
97. I believe Crown realizes that the audio/video recording of my interview with Det. Dent proves that both Mr. Johnson and Det. Dent were knowingly and deliberately misleading the court regarding my statements. That is why Crown did not provide it to me until three days before the trial, then took it back from me the day after the trial, then refused to allow me to have access to it so I could prepare for sentencing even though there were five months between the trial and the sentencing and it was directly relevant to issues I sought to raise at sentencing.
98. My belief in this matter is also supported by the fact that rather than seeking to simply admit the recording of the interview, or specific segments of the recording, Crown had Det. Dent testify about what was said in the interview. An audio/video

recording is much stronger evidence than witness testimony. I believe the reason Crown chose to have Det. Dent testify about my statements rather than using the audio/video recordings of the interview is because the recordings would have clearly shown the statements were not being made seriously.

99. I believe the trial judge's refusal to order the Crown to provide me access to the recording of the Det. Dent interview so I could prepare sentencing submissions shows that the judge was complicit in the Crown's misconduct. The judge knew the recording would prove Mr. Johnson and Det. Dent deliberately misrepresented my statements.

100. I was not actually provided access to the audio/video recordings of the Det. Dent interview again until 2021-12-16, for the purpose of preparing this appeal.

The trial judge erred in allowing the "Dear David Eby" article to be admitted as an exhibit.

101. There was absolutely no evidence provided that I had any involvement in the writing or publishing of the "Dear David Eby" article. The article was written and posted to the website on the day of the trial - while I was in the court room, in holding cells, in the Sheriff's transport, and/or locked in my cell at NFPC (Affid2, para 4). Therefore, I couldn't have possibly had any involvement, directly or indirectly, with writing or posting the article to the website.

102. Moreover, the probation order imposed by Judge Phillips came into effect upon my release from custody on 2020-08-20; the "Dear David Eby" article was written and published on 2020-08-19 - BEFORE the probation order came into effect. Therefore, the acts of writing and publishing it could not possibly have breached the probation order.

103. The condition I was accused and convicted of breaching only required me to take steps to cause the website to be taken down - it did not prohibit me from writing or publishing anything at all. So, even if I had written and published the article, doing so would not have violated any condition of the order imposed by Judge Phillips.
104. The article also has no bearing on the question of whether or not I complied with the probation condition by taking steps to cause the website to be taken down within 48 hours of my release from custody. As noted, the article was written and posted before the probation order came into effect, and it was written and posted by a third party with not involvement from me. The simple, indisputable facts of my circumstances on 2020-08-19 make my involvement impossible.
105. In his RFJ, at para 7, the judge pointed out the "Dear David Eby" article is signed "Sincerely Patrick Fox". But that is meaningless because the person who wrote and/or posted the article could have typed, literally, any name at the end of the article. This issue was put to Det. Dent on cross-examination, but he was very evasive and refused to respond to the substance of the question (TR p16145 - p17121).
106. In his interview of me, Det. Dent openly acknowledged the "Dear David Eby" article was posted to the website on 2020-08-19 - before the probation order came into effect, and that it had nothing at all to do with the charge against me (Affid1, Exhibit D, pages 1-1 - 1-3).
107. Given the criticisms of the local justice system and the sarcastic, mocking tone of much of the "Dear David Eby" article I believe it's use in the trial caused me unfair, prejudicial harm while having no probative value. And I believe that unfair, prejudicial harm was exactly Mr. Johnson's intention with putting that article before the judge.

Crown Counsel and the trial judge were using the criminal prosecution against me as retaliation for having repeatedly publicly exposed corruption and misconduct within the BCPS and the justice system, and as a means of attempting to coerce me into discontinuing the exposing of that corruption and misconduct (abuse of process).

108. Both Crown Counsel Chris Johnson and the judge admitted the reason I am being prosecuted is because I have repeatedly, and I continue to publish proof of the corruption and misconduct that has been occurring in my case (SuppTR p33l12-22), NOT because I breached any probation conditions and NOT to protect Capuano from ongoing harassment.

109. At sentencing, the judge said, regarding the guilty verdict "I've made a finding. You can always appeal my ruling, right? You have ground - you can always go the appeal route" [emphasis added] (TR p46l3-5). It seems clear to me the judge is acknowledging there were appealable errors made in the trial, yet he allowed it to proceed regardless.

The trial judge erred in considering Det. Dent a credible and reliable witness.

110. Det. Dent testified he had reviewed parts of the "previous" file to prepare for the interview (TR p6l35-36). Det. Dent subsequently testified his involvement in the case was only to interview me and that he did not review the file (TR p21l45-47). Det. Dent later testified at my trial in another matter that when he stated "previous" in his sworn testimony, he really meant "current" (Affid2, para 5).

111. On direct-examination, Det. Dent was asked if he had asked me whether I had taken down the website and Det. Dent unequivocally stated he did ask me that (TR p11l42-44). But on cross-examination, when I asked Det. Dent whether he asked me if I had taken down the website he testified he didn't recall, that there was nothing in his notes about asking me that, and that he doesn't believe he asked me if I had taken down the website (TR p20l33 - p21l19). And, when I asked Det. Dent

whether I had stated I had not taken down the website within 48 hours of my release he was evasive but eventually testified he did not have the information (TR p2014-32). In his RFJ, at para 9, the judge referred to Det. Dent stating he did ask me whether I had taken down the website, but the judge made absolutely no mention of Det. Dent subsequently admitting he did not ask me that.

112. In his RFJ, at para 14, the judge stated Det. Dent gave his evidence in a forthright manner. While that may have been true regarding Det. Dent's testimony on direct, on cross he was evasive and ambiguous on a number of critical issues, for example, when asked who wrote the "Dear David Eby" article (TR p16145 - p17121); when asked whether I had told him I had transferred ownership or control of the website to another party (TR p18132 - p1912); when asked whether I had stated I had not taken down the website, whether he had asked me if I had taken down the website, and whether the topic of taking down the website had even come up in the interview (TR p2014 - p21119); and when asked whether it is reasonable to say that he has absolutely no evidence at all as to whether or not the website had actually been taken down within 48 hours of my release from custody (TR p21139 - p22123).

113. The judge further said of Det. Dent, at para 14 of his RFJ, "I found him ultimately to be both a credible and ultimately reliable witness". However, Det. Dent repeatedly contradicted himself on the witness stand, for example: on direct, when Det. Dent was asked when the "Dear David Eby" article had been posted to the website he responded "August 19, 2020 at 1:53pm" (TR p7144 - p811) and when asked, on cross, whether the article was posted to the website before I was released from custody on August 20, 2020 Det. Dent responded "I don't have any knowledge in regards to that" (TR p17122-25); when asked, on direct, whether he had asked me whether I had taken down the website he responded "I did" (TR p11142-44) but when asked, on cross, about whether he had asked me if I had taken down the website he responded "...I don't believe I asked you if you had taken down the website..." (TR p21116-18); first Det. Dent testified that he had knowledge that the website had remained online and publicly accessible, continuously, from the time of my release

from custody on 2020-08-20 until he accessed it on 2020-09-16 (TR p21117-19) but on further cross-examination Det. Dent subsequently admitted he had no knowledge, at all, of the website being online or accessible other than at the moment he checked it on 2020-09-16 (TR p21130-37; p21147 - p22110); on direct, Det. Dent testified he had "reviewed parts of the previous file to prepare for the interview" (TR p6135-36) but on cross Det. Dent testified "I did not review the file. I did not look into anything beyond preparing for...an interview with yourself" (TR p21145-47).

114. I believe the record of Det. Dent's testimony shows that Det. Dent was NOT a credible and reliable witness.

The trial judge misapprehended the scope of Condition 4 of the probation order.

115. Condition 4 only required me to take steps to cause the website to be taken down within 48 hours of my release from custody. It did not require me to take any action to ensure the website remained offline beyond that 48 hours and it did not prohibit me from engaging in ANY conduct at all - including publishing any information about Capuano or even putting the same website back online AFTER having caused it to be taken down.

116. I was required to comply with the condition as it is written on the probation order. I was not required to comply with conditions which Judge Phillips may have intended or may have implied but did actually state, in writing, in the probation order.

117. In para 18 of his RFJ, the judge stated "The website in question was accessed by Detective-Constable Dent on or about the 15th of September of 2020. Mr. Fox was required to take all necessary steps to make sure that the information contained therein was no longer available, in particular, on the world wide web." And at para 19 the judge stated "The point is that the information contained in the website was available via the internet between the dates as set out by the Crown, being the 19th day of August 2020, and the 16th day of September 2020." However, the wording of

Condition 4 of the probation order only required me to take steps to cause particular content, namely the website accessible at www.desicapuano.com, to be no longer available, and to take those steps within 48 hours of my release from custody, namely between 8pm on 2020-08-20 and 8pm on 2020-08-22. There is absolutely nothing in the wording of the condition that required me, once the website was "no longer available", to take any action to cause it to REMAIN no longer available for the duration of the order - the condition did not state "...are no longer available and remain no longer available...". As long as within 48 hours of my release I took steps that caused the website to be no longer available then I had complied with the condition. And, according to Det. Dent's own testimony, he had no knowledge of the website being up or down, active or not, within the 48 hours following my release from custody (TR p21I30 - p22I10).

118. Moreover, there is nothing in the wording of Condition 4 which prohibited me from doing anything at all - including publishing or disseminating any information about Capuano, or even putting the same website back online after complying with the requirement of taking it down. So, the plain wording of the Condition ONLY required me to take steps to cause the website to be taken down following my release from custody - it did not require me to do ANYTHING beyond that and it did not PROHIBIT me from doing ANYTHING at all. Therefore, the fact that the website was online again four weeks after the 48 hour period in which I was required to take it down is simply not relevant to the condition I have been accused and convicted of breaching. The judge himself even clearly stated at para 19 of his RFJ "What happened within 48 hours remains uncertain and perhaps only speculation as to what took place, and I am not going to speculate what happened."

119. At para 19 of his RFJ, the judge said "There were statements made by Mr. Fox that clearly implicated him beyond a reasonable doubt..." however, the judge did not state or provide any indication of which statements he was referring to. The judge goes on to say "...in relation to access to the website, social media, or other publication which was prohibited by Judge Phillips..." but, in fact, absolutely nothing

was prohibited by the probation order imposed by Judge Phillips - there was only one condition and that condition only required me to engage in particular conduct within 48 hours of my release from custody; there were no conditions which prohibited anything.

120. In his RFJ, at para 19, the judge said "It is more than clear that it was the accused who was involved in that website...he was inputting the information...". I do not agree with those statements, but nevertheless, there is nothing in the wording of the condition I was accused and convicted of breaching which prohibited me from having any involvement in the website or inputting any information to the website - as long as within 48 of my release from custody I had taken whatever steps were necessary to cause the website to be no longer available.

The verdict was not supported by the evidence.

121. The trial judge and the Crown acknowledged there was no evidence to establish I had any ownership or control over the website during the time relevant to the charge ((TR p26l15-17; RFJ at para 12). And, in order to comply with the probation condition I would, necessarily, need to own or control the website, or I would need the consent of the current owner. For me to shut down the website of another party without the consent of that party would violate the rights of that party. Moreover, doing so would, necessarily, require accessing the party's user account with the hosting provider which would require knowing their user name password - which I don't have. And, accessing their account without their consent would also be a crime.

122. In his RFJ, at para 19, the judge said "It is more than clear that it was the accused who was involved in that website. Ownership aside, he was inputting the information...". However, without being the owner of the website I would have no legal authority to take the website down. And regarding the question of whether I was involved in, or contributing to any of the content that was added to or updated

on the website subsequent to the Judge Phillips probation order coming into effect on 2020-08-20, there is absolutely nothing in the probation order which prohibited me from doing so. If, when the judge said "...it was the accused who was involved in that website...he was inputting the information..." he was referring to conduct which occurred before the probation order came into effect on 2020-08-20 then it is simply not relevant because it occurred while the probation order was not in effect. And if the judge was referring to conduct which occurred after the probation order came into effect on 2020-08-20, there was absolutely no evidence offered that there had been anything added to or updated on the website during that time - in other words, there was no evidence at all that the conduct the judge is referring to even occurred.

123. The judge also acknowledged it was unknown whether or not the website was actually taken down within 48 hours of my release from custody (RFJ at para 19) - and since THAT was the only thing I was required to do, then the judge is literally admitting the allegation has not been proven.

124. In his RFJ, at para 9, the judge erroneously quoted Det. Dent referring to me as having said "Important to have good quality audio-video for my website" [emphasis added]. However, what Det. Dent actually stated was "...important to have good quality audio and video for him to put on the website later" [emphasis added] (TR p11120-22). This is significant because in the judge's erroneous version I would have been claiming ownership of the website, however based on what Det. Dent actually stated I had not suggested I had any association with the website, and I was stating my intention for some later time - presumably after the period of probation ended. Moreover, the probation order imposed by Judge Phillips did not prohibit me from publishing or disseminating ANYTHING at all, including the audio/video recordings of my police interviews. So even if I was stating an intention to publish the audio/video recordings of the interview it would have no relevance to the question of whether or not the website was taken down within 48 hours of my release from custody.

125. In his RFJ , at para 9, the judge erroneously stated I was asked whether or not the website had been taken down. However, while Det. Dent did first testify on direct that he did ask me whether I had taken down the website (TR p11I42-44), on cross he admitted he, in fact, did NOT ask me that (TR p21I13-19). In fact, Det. Dent acknowledged the topic of whether or not the website had been taken down may not have even come up at all during the interview.

Part 4: Nature of Order Sought

126. I seek an order allowing the appeal, and quashing the conviction and ordering a new trial or, in the alternative, directing that verdicts of acquittal be entered on all counts.

PART V – LIST OF AUTHORITIES